

## **Changes to Medicare Payment for Oxygen Equipment, Oxygen Contents, and Capped Rental Durable Medical Equipment: Proposed Rule (CMS-1304-P)**

### **Overview**

Today the Centers for Medicare & Medicaid Services (CMS) issued a proposed rule that would implement new rent-to-own payment methodologies for oxygen equipment and capped rental durable medical equipment (DME). These proposed policy changes, which are required by the Deficit Reduction Act of 2005 (DRA), will reduce Medicare expenditures for the affected items of DME, and reduce beneficiary liability for coinsurance.

In addition, as part of this rule, CMS proposes to use statutory authority provided by BBA 1997 to establish separate payment classes and monthly payments for: portable oxygen contents delivery; stationary oxygen contents delivery; and new, alternative oxygen equipment technologies that meet all of the patient's oxygen needs without delivery of oxygen contents. The goals of this proposal are to implement the DRA payment changes for oxygen in a way that does not eliminate the incentive for suppliers to provide new cost-effective oxygen equipment technology and to ensure beneficiary access to portable oxygen contents in the event that they are still using traditional portable oxygen systems.

### **Background**

#### **Oxygen Equipment:**

Under the payment methodology in effect before the DRA, Medicare made continuous monthly payments for those beneficiaries who use oxygen equipment as long as it was medically necessary. Beneficiaries were responsible for a 20 percent coinsurance of Medicare's payment on the rental of the equipment. As a result, a beneficiary's coinsurance payment would often exceed the purchase price of the oxygen equipment without the beneficiary acquiring title to the equipment.

#### **Capped Rental Items:**

Under the payment methodology in effect before the DRA, Medicare paid for certain types of DME under a capped rental arrangement, which allowed a beneficiary to either purchase the equipment after 13 continuous months or continually rent the equipment from the supplier. If the beneficiary continued to rent the equipment from the supplier, Medicare made two additional monthly payments and a semi-annual maintenance and servicing payment even if no services were furnished. Beneficiaries are liable for a 20 percent coinsurance of Medicare's payment on the equipment. In general, beneficiaries continued to rent the equipment for 15 months and the purchase option was used infrequently.

### **Legislative Background**

#### **Oxygen Equipment:**

Effective January 1, 2006, Section 5101(b) of the DRA of 2005 amended the Social Security Act limiting the total number of Medicare payments for oxygen equipment to 36 continuous months. After 36 continuous months of rental, the DRA requires that ownership for the stationary and/or portable oxygen equipment must be transferred from the supplier to the beneficiary. In the case of the beneficiaries using oxygen equipment on December 31, 2005, the 36 month rental period begins on January 1, 2006. The DRA also required that Medicare continue to make payments for delivery and refilling of oxygen contents for beneficiary owned gaseous or liquid systems for as long as it is medically necessary.

#### **Capped Rental Items:**

The DRA revised Medicare payments for capped rental items to 13 continuous months only. The DRA required that the supplier transfer ownership for the capped rental equipment to the beneficiary after the 13<sup>th</sup> continuous month of rental. This provision applies for capped rental items for which the first rental month occurs on or after January 1, 2006. A supplier must offer beneficiaries the opportunity to purchase a power-driven wheelchair at the time that the supplier furnishes the item.

#### **Maintenance and Servicing**

The DRA required that Medicare make payments for reasonable and necessary maintenance and servicing of beneficiary owned oxygen and capped rental equipment for parts and labor not covered by the supplier's or manufacturer's warranty. With the exception of capped rental items furnished prior to January 1, 2006, maintenance and servicing payments may only be made after the supplier has transferred title to the equipment to the beneficiary.

### **Proposed Rule**

As of January 1, 2006, Medicare payment for oxygen equipment changed from continuous rental to "rent-to-own" after 36 continuous months. For capped rental items, Medicare payment changed to beneficiary purchase of the capped rental item after 13 continuous months only. Title of oxygen equipment and capped rental items would transfer from the supplier to the beneficiary at 36/13 months, respectively.

Under the proposed rule, CMS clarifies Medicare payment for oxygen equipment and capped rental DME regarding number of rental months, maintenance and servicing, oxygen contents, replacements and oxygen supplies and accessories. In addition, CMS is proposing additional supplier requirements to safeguard beneficiaries, and modifying payment for oxygen classes to reflect new technology and adequate compensation for delivery and refilling of portable contents.

### Maintenance and Servicing and Replacements

- Medicare has traditionally paid for reasonable and necessary maintenance and servicing for beneficiary owned items. We are proposing to continue applying these policies also to beneficiary owned oxygen equipment. All reasonable and necessary maintenance of beneficiary owned capped rental or oxygen equipment which must be performed by authorized technicians would be covered.
- Medicare has also traditionally paid for loaner equipment while a beneficiary's equipment is being repaired. We are proposing to continue these policies as well for beneficiary owned oxygen equipment and capped rental items.
- Under the proposed rule, payment for maintenance and servicing of beneficiary owned equipment (unless covered by a supplier's or manufacturer's warranty) will be based on the same method currently used for other beneficiary owned DME. Payment is currently made for parts and labor established based on payment amounts established by the carriers. Some manufacturers of commonly used oxygen equipment offer full warranties that cover parts for up to five years.
- CMS is proposing that the supplier be responsible for replacement of beneficiary owned oxygen equipment or capped rental items in use for less than 5 years, the current reasonable useful lifetime for DME, if total accumulated costs of repair exceed 60 percent of the replacement cost for the item. This requirement would not apply in the case where replacement is covered under a supplier's or manufacturer's warranty. For beneficiary owned items, the supplier that transferred title for the item to the beneficiary would be responsible for furnishing the replacement item.
- Separate payment for replacement of supplies and accessories (e.g. cannulas, tubing) will continue after ownership of the equipment transfers to the beneficiary.

### Oxygen Classes and Payment Rates

- We are proposing to establish a new class and monthly payment amount for new technology such as portable oxygen transfilling equipment and portable oxygen concentrators. A higher portable add-on payment will be allowed for these systems that eliminate the need for delivery and refilling of oxygen contents for portable systems.
- We are also proposing to establish two separate classes and monthly payment amounts for stationary oxygen contents and portable oxygen contents that need to be delivered for beneficiary owned liquid or gaseous oxygen equipment.
- BBA provision requires payment changes to be budget neutral. To achieve budget neutrality for the proposed changes, we would need to modify other

Medicare oxygen payment rates. As a result, the current monthly payment amount for stationary oxygen and oxygen contents would be decreased. Budget neutrality requires that Medicare's total spending for all modalities of oxygen equipment, including contents, be the same under the proposed change as it would be without the change.

### Beneficiary Safeguards

- CMS is proposing safeguards for beneficiaries. CMS is proposing that a supplier who furnishes rented oxygen equipment/capped rental to the beneficiary must continue to furnish that item throughout the whole rental period except in certain circumstances. We believe this is reasonable to protect a beneficiary from being forced to change equipment or suppliers during the period of medical need unless he or she wants to.
- We are concerned that there might be potential incentives for a supplier to provide lower quality equipment before the title transfers to the beneficiary. Therefore CMS is proposing, with certain exceptions, the supplier may not switch out equipment at any time during the 36/13 month rental period.
- CMS is proposing that the supplier must disclose to the beneficiary its intentions regarding assignment of all potential monthly rental claims for oxygen equipment/capped rental DME items. Because a supplier's decision on assignment has direct financial effect on beneficiaries, we are making this proposal so that beneficiaries can make an informed choice and to promote competition among suppliers.
- In order to promote beneficiary choices, CMS plans to post information on a CMS or CMS contractor website(s) indicating (1) the percentage of beneficiaries for which a supplier accepts assignment and (2) the percentage of cases which the supplier accepted assignment during the beneficiary's entire rental period.
- In cases where a beneficiary moves, either temporarily or permanently outside the initial supplier's service area, CMS proposes that another supplier may be arranged to furnish the item on either a temporary or permanent basis.

### **Impact on Medicare Beneficiaries**

The changes brought about by the implementation of the Deficit Reduction Act (DRA) of 2005 regarding oxygen and oxygen equipment and capped rental DME would have a financial impact for Medicare beneficiaries. Beneficiaries who use oxygen equipment would no longer have to pay coinsurance after the 36<sup>th</sup> month and those who use capped rental items will no longer pay two additional months of coinsurance and a semi-annual

maintenance and servicing payment. Medicare beneficiaries will own capped rental equipment and oxygen equipment after 13/36 months respectively.

**Tips for the Public**

CMS seeks public comment on the proposed rule for key elements of the implementation of the Deficit Reduction Act (DRA) of 2005 and other changes regarding oxygen and oxygen equipment and capped rental DME items. These elements include:

- The appropriateness of the proposed Medicare payments and/or alternative payment rates
- Data and studies regarding payment for the oxygen classes

The proposed rule is on display today at the Office of the Federal Register and will be published in the August 3, 2006 Federal Register. Public comments will be accepted until September 25, 2006. The proposed rule is available at <http://www.cms.hhs.gov/HomeHealthPPS/downloads/CMS1304Pdisplay.pdf> on the CMS website.

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